

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 DISTRICT OF NEVADA

7 \* \* \*

8 JASON EDWARD STIDHAM,

Case No. 3:17-cv-00500-HDM-WGC

9 Petitioner,

ORDER

10 v.

11 HAROLD WICKHAM, et al.,

12 Respondents.

13 Jason Edward Stidham's pro se 28 U.S.C. § 2254 petition for writ of habeas  
14 corpus is before the court for final disposition on the merits (ECF No. 9).

15 **I. Procedural History and Background**

16 Stidham challenges his guilty plea to attempted burglary, burglary, possession of a  
17 stolen motor vehicle, and possession of stolen property (exhibit 8).<sup>1</sup> The state district  
18 court sentenced Stidham to a term of 24 to 60 months each on the attempted burglary  
19 and possession of stolen vehicle counts, and 48 to 60 months on the burglary count, all  
20 to run concurrently, with a consecutive 48 to 60 months on the possession of stolen  
21 property count. Exh. 28.

22 Stidham did not file a direct appeal. He filed a state postconviction petition. Exhs.  
23 33, 41. The state district court dismissed 4 grounds and conducted an evidentiary  
24 hearing on the remaining claim—whether Stidham was deprived of his right to appeal  
25 under *Lozada v. State*, 871 P.2d 944 (Nev. 1994). Thereafter, the court dismissed the  
26 petition, and the Nevada Court of Appeals affirmed. Exhs. 65, 85.

27  
28 <sup>1</sup> Exhibits referenced in this order are exhibits to respondents' answer, ECF No. 15, and are found at ECF Nos. 16-18.

1 Stidham's federal petition sets forth 5 grounds for relief (ECF No. 9). Respondents  
2 have answered the petition, and Stidham replied (ECF Nos. 15, 22).

3 **II. Legal Standards**

4 a. AEDPA Standard of Review

5 28 U.S.C. § 2254(d), a provision of the Antiterrorism and Effective Death Penalty  
6 Act (AEDPA), provides the legal standards for this court's consideration of the petition in  
7 this case:

8 An application for a writ of habeas corpus on behalf of a person in  
9 custody pursuant to the judgment of a State court shall not be granted with  
10 respect to any claim that was adjudicated on the merits in State court  
proceedings unless the adjudication of the claim —

11 (1) resulted in a decision that was contrary to, or involved an  
12 unreasonable application of, clearly established Federal law, as  
determined by the Supreme Court of the United States; or

13 (2) resulted in a decision that was based on an unreasonable  
14 determination of the facts in light of the evidence presented in the State  
court proceeding.

15 The AEDPA "modified a federal habeas court's role in reviewing state prisoner  
16 applications in order to prevent federal habeas 'retrials' and to ensure that state-court  
17 convictions are given effect to the extent possible under law." *Bell v. Cone*, 535 U.S.  
18 685, 693-694 (2002). This court's ability to grant a writ is limited to cases where "there is  
19 no possibility fair-minded jurists could disagree that the state court's decision conflicts  
20 with [Supreme Court] precedents." *Harrington v. Richter*, 562 U.S. 86, 102 (2011). The  
21 Supreme Court has emphasized "that even a strong case for relief does not mean the  
22 state court's contrary conclusion was unreasonable." *Id.* (citing *Lockyer v. Andrade*, 538  
23 U.S. 63, 75 (2003)); *see also Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (describing  
24 the AEDPA standard as "a difficult to meet and highly deferential standard for evaluating  
25 state-court rulings, which demands that state-court decisions be given the benefit of the  
26 doubt") (internal quotation marks and citations omitted).

1 A state court decision is contrary to clearly established Supreme Court precedent,  
2 within the meaning of 28 U.S.C. § 2254, “if the state court applies a rule that contradicts  
3 the governing law set forth in [the Supreme Court’s] cases” or “if the state court  
4 confronts a set of facts that are materially indistinguishable from a decision of [the  
5 Supreme Court] and nevertheless arrives at a result different from [the Supreme  
6 Court’s] precedent.” *Lockyer*, 538 U.S. at 73 (quoting *Williams v. Taylor*, 529 U.S. 362,  
7 405-06 (2000), and citing *Bell*, 535 U.S. at 694.

8 A state court decision is an unreasonable application of clearly established Supreme  
9 Court precedent, within the meaning of 28 U.S.C. § 2254(d), “if the state court identifies  
10 the correct governing legal principle from [the Supreme Court’s] decisions but  
11 unreasonably applies that principle to the facts of the prisoner’s case.” *Lockyer*, 538  
12 U.S. at 74 (quoting *Williams*, 529 U.S. at 413). The “unreasonable application” clause  
13 requires the state court decision to be more than incorrect or erroneous; the state  
14 court’s application of clearly established law must be objectively unreasonable. *Id.*  
15 (quoting *Williams*, 529 U.S. at 409).

16 To the extent that the state court’s factual findings are challenged, the  
17 “unreasonable determination of fact” clause of § 2254(d)(2) controls on federal habeas  
18 review. *E.g.*, *Lambert v. Blodgett*, 393 F.3d 943, 972 (9th Cir.2004). This clause  
19 requires that the federal courts “must be particularly deferential” to state court factual  
20 determinations. *Id.* The governing standard is not satisfied by a showing merely that the  
21 state court finding was “clearly erroneous.” 393 F.3d at 973. Rather, AEDPA requires  
22 substantially more deference:

23  
24 .... [I]n concluding that a state-court finding is unsupported by  
25 substantial evidence in the state-court record, it is not enough that we  
26 would reverse in similar circumstances if this were an appeal from a  
27 district court decision. Rather, we must be convinced that an appellate  
28 panel, applying the normal standards of appellate review, could not  
reasonably conclude that the finding is supported by the record.

1           *Taylor v. Maddox*, 366 F.3d 992, 1000 (9th Cir.2004); *see also Lambert*, 393  
2 F.3d at 972.

3           Under 28 U.S.C. § 2254(e)(1), state court factual findings are presumed to be  
4 correct unless rebutted by clear and convincing evidence. The petitioner bears the  
5 burden of proving by a preponderance of the evidence that he is entitled to habeas  
6 relief. *Cullen*, 563 U.S. at 181.

7  
8           **b. Ineffective Assistance of Counsel**

9           Stidham's petition alleges ineffective assistance of counsel (IAC). IAC claims are  
10 governed by the two-part test announced in *Strickland v. Washington*, 466 U.S. 668  
11 (1984). In *Strickland*, the Supreme Court held that a petitioner claiming ineffective  
12 assistance of counsel has the burden of demonstrating that (1) the attorney made errors  
13 so serious that he or she was not functioning as the "counsel" guaranteed by the Sixth  
14 Amendment, and (2) that the deficient performance prejudiced the defense. *Williams*,  
15 529 U.S. at 390-91 (citing *Strickland*, 466 U.S. at 687). To establish ineffectiveness, the  
16 defendant must show that counsel's representation fell below an objective standard of  
17 reasonableness. *Id.* To establish prejudice, the defendant must show that there is a  
18 reasonable probability that, but for counsel's unprofessional errors, the result of the  
19 proceeding would have been different. *Id.* A reasonable probability is "probability  
20 sufficient to undermine confidence in the outcome." *Id.* Additionally, any review of the  
21 attorney's performance must be "highly deferential" and must adopt counsel's  
22 perspective at the time of the challenged conduct, in order to avoid the distorting effects  
23 of hindsight. *Strickland*, 466 U.S. at 689. It is the petitioner's burden to overcome the  
24 presumption that counsel's actions might be considered sound trial strategy. *Id.*

1 Ineffective assistance of counsel under *Strickland* requires a showing of deficient  
2 performance of counsel resulting in prejudice, “with performance being measured  
3 against an objective standard of reasonableness, . . . under prevailing professional  
4 norms.” *Rompilla v. Beard*, 545 U.S. 374, 380 (2005) (internal quotations and citations  
5 omitted). When the ineffective assistance of counsel claim is based on a challenge to a  
6 guilty plea, the *Strickland* prejudice prong requires a petitioner to demonstrate “that  
7 there is a reasonable probability that, but for counsel’s errors, he would not have  
8 pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52,  
9 59 (1985).

11 If the state court has already rejected an ineffective assistance claim, a federal  
12 habeas court may only grant relief if that decision was contrary to, or an unreasonable  
13 application of, the *Strickland* standard. See *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003).  
14 There is a strong presumption that counsel’s conduct falls within the wide range of  
15 reasonable professional assistance. *Id.*

17 The United States Supreme Court has described federal review of a state supreme  
18 court’s decision on a claim of ineffective assistance of counsel as “doubly deferential.”  
19 *Cullen*, 563 U.S. at 190 (quoting *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009)).  
20 The Supreme Court emphasized that: “We take a ‘highly deferential’ look at counsel’s  
21 performance . . . through the ‘deferential lens of § 2254(d).’” *Id.* at 1403 (internal  
22 citations omitted). Moreover, federal habeas review of an ineffective assistance of  
23 counsel claim is limited to the record before the state court that adjudicated the claim on  
24 the merits. *Cullen*, 563 U.S. at 181-84. The United States Supreme Court has  
25 specifically reaffirmed the extensive deference owed to a state court’s decision  
26 regarding claims of ineffective assistance of counsel:  
27  
28

1  
2 Establishing that a state court's application of *Strickland* was  
3 unreasonable under § 2254(d) is all the more difficult. The standards  
4 created by *Strickland* and § 2254(d) are both "highly deferential," *id.* at  
5 689, 104 S.Ct. 2052; *Lindh v. Murphy*, 521 U.S. 320, 333, n.7, 117 S.Ct.  
6 2059, 138 L.Ed.2d 481 (1997), and when the two apply in tandem, review  
7 is "doubly" so, *Knowles*, 556 U.S. at 123. The *Strickland* standard is a  
8 general one, so the range of reasonable applications is substantial. 556  
9 U.S. at 124. Federal habeas courts must guard against the danger of  
10 equating unreasonableness under *Strickland* with unreasonableness  
11 under § 2254(d). When § 2254(d) applies, the question is whether there is  
12 any reasonable argument that counsel satisfied *Strickland's* deferential  
13 standard.

14 *Harrington*, 562 U.S. at 105. "A court considering a claim of ineffective assistance of  
15 counsel must apply a 'strong presumption' that counsel's representation was within the  
16 'wide range' of reasonable professional assistance." *Id.* at 104 (quoting *Strickland*, 466  
17 U.S. at 689). "The question is whether an attorney's representation amounted to  
18 incompetence under prevailing professional norms, not whether it deviated from best  
19 practices or most common custom." *Id.* (internal quotations and citations omitted).

20 Stidham pleaded guilty upon the advice of counsel, thus he "may only attack the  
21 voluntary and intelligent character of the guilty plea by showing that the advice he  
22 received from counsel was [ineffective] . . . and that there is a reasonable probability  
23 that, but for counsel's errors, he would not have pleaded guilty and would have insisted  
24 on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 56-57, 59 (1985); *Lambert v. Blodgett*,  
25 393 F.3d 943, 980-981 (9th Cir. 2004).

### 26 **III. Instant Petition**

#### 27 **Ground 1**

28 Stidham contends that his plea counsel failed to advise him of his right to appeal  
(ECF No. 9, pp. 3-4). Generally, counsel has a constitutionally imposed duty to consult  
with a defendant about an appeal when he or she has reason think that either (1) a  
rational defendant would want to appeal; or (2) this particular defendant reasonably  
demonstrated that he or she is interested in appealing. *Roe v. Flores-Ortega*, 528 U.S.  
470, 480 (2000).

1 Here, Stidham's guilty plea agreement stipulated to a combined term of 5 to 15  
2 years. Exh. 8. The agreement expressly provided that the State was free to withdraw  
3 from the agreement or to argue for an appropriate sentence if Stidham failed to appear  
4 at any scheduled proceeding or if prior to sentencing Stidham was arrested or if  
5 Stidham misrepresented his criminal history.

6 After Stidham failed to appear for his presentence interview or his initial sentencing  
7 hearing the district court issued a bench warrant. Exh. 22, p. 3; exhs. 14, 15. Stidham  
8 was arrested on new charges in Oregon and extradited to Nevada; thereafter, the state  
9 district court sentenced him to a combined term of 8 to 20 years. Exh. 27.

10 Stidham testified at the evidentiary hearing on his state postconviction claim of IAC  
11 for his plea counsel's failure to file a notice of appeal. Exh. 61, pp. 3-15. He said that at  
12 the end of the sentencing hearing, "I was just concerned about, if there was anything I  
13 could do. And I was informed that there wasn't, because it came from a guilty plea, and  
14 in the guilty plea I didn't follow by with the guilty plea, was – what I was supposed to do,  
15 I didn't follow with what I was supposed to do through the guilty plea, so there wasn't  
16 really anything I could do." *Id.* at 7. He said he had "no idea at all" that he had a right to  
17 appeal. *Id.* His postconviction counsel showed him a letter dated the same day as the  
18 sentencing from his plea lawyer regarding appeal rights and he said he had never  
19 received the letter. Stidham testified that he first learned from another inmate that he  
20 could have filed an appeal a couple of months after he was sentenced and that he  
21 "absolutely" would have appealed if he had known that was an option. On cross  
22 examination, Stidham explained that he was overwhelmed by the significantly longer  
23 sentence he received than was stipulated to in the plea agreement, but that once his  
24 counsel reminded him that he had violated the terms of the agreement it made more  
25 sense.

26 Stidham's plea counsel testified. *Id.* at 16-22. He agreed that Stidham's recounting  
27 of the conversation they had after sentencing was a "fair representation" of the  
28

1 conversation but also said it was not exhaustive of the discussions they had with  
2 respect to appellate rights. Counsel stated that after sentencing Stidham called him  
3 from jail. Counsel explained that Stidham's appellate rights in the context of a guilty  
4 plea were very limited and that the court had sentenced him within the statutory  
5 parameters. They discussed that counsel did not see any viable bases for appeal.  
6 Counsel testified that Stidham did not give him any indication that he wished to appeal  
7 and that if he had counsel would have immediately filed a notice of appeal. He also  
8 said that he sent Stidham the letter describing his appellate rights on the day of  
9 sentencing. Counsel finally noted that he had known and worked with Stidham for  
10 about 10 years on various other criminal matters.

11 The state district court found that Stidham's counsel testified credibly that after  
12 sentencing he sent Stidham a letter and also had a telephone conversation with  
13 Stidham about his rights. Exh. 65, p. 3. The court also explained that it did not find  
14

15 any credible testimony indicating that Stidham specifically instructed  
16 trial counsel to file a direct appeal. Notably, counsel testified that he was  
17 fully cognizant of his obligations under *Lozada* to file an appeal, but did  
18 not have any indication, after his telephone conversation with Stidham,  
19 that Stidham wished him to do so. While Stidham may have expressed  
20 disappointment in the length of his sentence, the court does not find that  
21 this general disappointment rose to a level sufficient to cause counsel to  
22 file an appeal.

23 *Id.* at 4.

24 Affirming the dismissal of this claim, the Nevada Court of Appeals explained:

25 Stidham failed to demonstrate he was deprived of a direct appeal.  
26 "[T]rial counsel has a constitutional duty to file a direct appeal in two  
27 circumstances: when requested to do so and when the defendant  
28 expresses dissatisfaction with his conviction." *Toston v. State*, 267 P.3d  
795, 800 (Nev. 2011). At the evidentiary hearing, Stidham's counsel  
testified he mailed a letter to Stidham and had a telephone conversation  
with Stidham where he explained Stidham's appellate rights. Counsel  
testified he would have pursued a direct appeal had Stidham asked him to  
do so. The district court concluded counsel was credible, Stidham's  
evidence attempting to demonstrate counsel had not explained a direct  
appeal was not credible, and Stidham's claim lacked merit. The district



1 court further concluded Stidham did not otherwise express the type of  
2 dissatisfaction with his conviction that would have required counsel to file  
3 a notice of appeal. See *id.* at 801 (explaining the defendant has the  
4 burden to indicate his desire to pursue a direct appeal). Our review of the  
5 record reveals the district court's conclusions are supported by substantial  
6 evidence. Therefore, we conclude the district court did not err in denying  
7 this claim.

8 Exh. 83, p. 2. Stidham's counsel testified that he had a 10-year relationship with  
9 Stidham and would have filed an appeal if Stidham had indicated that that was his  
10 desire. Stidham testified that he was never told he could appeal; the state district court  
11 found his testimony not credible. Stidham has failed to demonstrate that the Nevada  
12 Court of Appeal's decision was contrary to or involved an unreasonable application of  
13 *Strickland*. 28 U.S.C. § 2254(d). Federal habeas relief is denied as to ground 1.

## 14 **Ground 2**

15 Stidham argues that his counsel failed to investigate his mental health and have a  
16 psychiatric evaluation completed (ECF No. 9, p. 6). He had attempted suicide about  
17 two and one-half months before entering into the guilty plea agreement and asserts that  
18 that due to his mental health issues and drug addiction/withdrawal he did not knowingly  
19 and voluntarily enter his guilty plea. He alleges that he told his counsel he was "not  
20 thinking correctly" before his plea hearing.

21 The state-court record reflects a detailed plea canvass. Exh. 7. Stidham indicated  
22 that he was not under the influence of any substance that prevented him from  
23 understanding the proceedings, that he had read and discussed the plea agreement in  
24 this case and a second case with his counsel, that he understood the agreements and  
25 agreed to be bound by them. He stated that he understood that the court was not  
26 bound by the recommendation/stipulation of 5 to 15 years and might give him a different  
27 sentence.

28 The state district court dismissed this claim, finding that Stidham made no specific  
factual allegations regarding what evidence or testimony he would present to  
demonstrate that he was not competent at the time he entered his plea. Exh. 46, p. 2.

1 The court further observed that Stidham did not allege that he lacked the present ability  
2 to consult with his counsel or that he lacked a rational or factual understanding of the  
3 proceedings against him.

4 The Nevada Court of Appeals also rejected this claim:

5  
6 Stidham asserted he suffered from mental difficulties, used prescription  
7 medication, and attempted to commit suicide prior to entry of his guilty  
8 plea, and these issues may have caused him to be incompetent when he  
9 entered his guilty plea. Stidham failed to demonstrate his counsel's  
10 performance was deficient or resulting prejudice. Stidham did not provide  
11 evidence to support an assertion he was incompetent when he entered his  
12 plea because he failed to show he did not have the ability to consult with  
13 his attorney with a reasonable degree of rational understanding and that  
14 he did not have a rational and factual understanding of the proceedings  
15 against him when he entered his guilty plea. See *Melchor-Gloria v. State*,  
16 99 Nev. 174, 179-80, 660 P.2d 109, 113 (1983). Because Stidham failed  
17 to demonstrate he could have met the legal standard of incompetency, he  
18 did not demonstrate his counsel acted in an objectively unreasonable  
19 manner regarding this issue or a reasonable probability of a different  
20 outcome had counsel investigated his mental health or sought a  
21 psychiatric evaluation. Therefore, we conclude the district court did not err  
22 in denying this claim without considering it at the evidentiary hearing. See  
23 *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

24 Exh. 83, p. 3. Nothing in the record supports Stidham's claim that he was not  
25 competent to enter into the plea agreement. Stidham attached a few pages of medical  
26 records to his federal petition (ECF No. 9, pp. 31-38). Respondents point out that these  
27 documents were not part of the state-court record. In any event, the documents appear  
28 to reflect minimal soft tissue injury to his neck from the suicide attempt and problems  
tolerating pain medication for pancreatitis. While they reflect that Stidham was  
apparently on suicide watch, they provide no information regarding Stidham's  
competency and ability to knowingly, intelligently, and voluntarily enter into a plea  
agreement. Stidham has not shown that the Nevada Court of Appeal's decision was  
contrary to or involved an unreasonable application of *Strickland*. 28 U.S.C. § 2254(d).  
Ground 2 is, therefore, denied.

### Ground 3

1 Stidham claims that counsel failed to object to the sentence structure and failed to  
2 inform Stidham that the court could impose consecutive sentences and harsher  
3 sentences than stipulated to in the plea agreement (ECF No. 9, p. 8).

4 The Nevada Court of Appeals affirmed the dismissal of this claim because in the  
5 written plea agreement and during the plea canvass Stidham acknowledged both that  
6 the court could impose consecutive sentences and that the court was not bound by the  
7 parties' stipulation as to sentencing. Exh. 83, pp. 3-4.

8 This claim is utterly belied by the record. The plea agreement itself clearly states  
9 that if Stidham failed to appear for any subsequent court proceedings the State was free  
10 to argue for an "appropriate sentence." Exh. 8. Stidham then failed to appear, having  
11 fled the jurisdiction. During the plea canvass, in fact, the court informed Stidham that it  
12 was not bound to follow the recommendation and also specifically asked him: "Do you  
13 recognize that these matters – the court could run these matters consecutively?"  
14 Stidham stated that he understood. Exh. 7, pp. 12-13.

15 Stidham has not demonstrated that the Nevada Court of Appeal's decision was  
16 contrary to or involved an unreasonable application of *Strickland*. 28 U.S.C. § 2254(d).  
17 Federal habeas relief is denied as to ground 3.

#### 18 **Ground 4**

19 Stidham asserts that counsel failed to investigate and to present mitigating evidence  
20 at his sentencing hearing (ECF No. 9, p. 10).

21 The state district court dismissed this claim finding that Stidham made only a general  
22 allegation that he had a clean record prior to 2012 but failed to identify any witnesses or  
23 specific factual evidence counsel should have presented. Exh. 45, p. 3.

24 The Nevada Court of Appeals held that Stidham failed to demonstrate deficiency or  
25 prejudice.

26  
27 At the sentencing hearing, counsel advised the sentencing court  
28 Stidham's problems stemmed from his substance abuse issues but  
explained Stidham performed well when under supervision and he had not

1 engaged in criminal activity for years prior to the events leading to these  
2 charges. Under these circumstances, Stidham failed to demonstrate his  
3 counsel's arguments at the sentencing hearing amounted to the actions of  
4 objectively unreasonable counsel. In addition; Stidham did not identify any  
5 character witnesses who would have provided favorable information, and  
6 a bare claim is insufficient to demonstrate he is entitled to relief. *See id.*  
7 [*Hargrove v. State*, 686 P.2d at 225]. Considering the sentencing  
8 arguments and the information before the sentencing court, including  
9 information demonstrating Stidham absconded from Nevada while he  
10 awaited sentencing in this matter and was charged with committing  
11 additional crimes during that time period, Stidham failed to demonstrate a  
12 reasonable probability of a different outcome had counsel performed  
13 different actions at the sentencing hearing. Therefore, we conclude the  
14 district court did not err in denying this claim without considering it at the  
15 evidentiary hearing. *See id.*

16 Exh. 83, p. 4. *See also* sentencing hearing, exh. 27. Simply put, after entering into a  
17 guilty plea for a stipulated sentence, Stidham left the jurisdiction and was charged with  
18 crimes in Oregon. The state district court then imposed a sentence longer than the  
19 stipulated sentence. He has not shown that the Nevada Court of Appeal's decision that  
20 he failed to show deficiency or prejudice regarding his counsel's presentation at  
21 sentencing was contrary to or involved an unreasonable application of *Strickland*. 28  
22 U.S.C. § 2254(d). Ground 4 is denied.

#### 23 **Ground 5**

24 Stidham contends that he never received a copy of the presentence investigation  
25 report (PSI) and only received the supplemental PSI at the sentencing hearing (ECF  
26 No. 9, p. 12).

27 At the outset of the sentencing hearing, Stidham's counsel informed the court that he  
28 had only just received the supplemental PSIs and needed to review them with Stidham.  
Exh. 27, pp. 3-7. The court took a recess in order that Stidham and his lawyer could  
review the PSIs. The only correction counsel had was to correct Stidham's birthdate on  
the reports.

The state district court dismissed this claim, finding that Stidham did not identify any  
other specific factual errors in the PSI. Exh. 46, p. 3.

1 The Nevada Court of Appeals again concluded that Stidham failed to show  
2 deficiency or prejudice:

3  
4 At the beginning of the sentencing hearing, counsel informed the  
5 district court the defense had just received the PSI, had not had time to  
6 review it, and requested additional time to review and discuss the PSI.  
7 The district court trailed the matter until later that day, and when the  
8 matter was recalled, counsel informed the district court the defense had  
9 been able to sufficiently review the PSI. Under these circumstances,  
10 Stidham failed to demonstrate counsel's actions were objectively  
11 unreasonable. Stidham also acknowledged the PSI did not contain any  
errors which worked to his detriment. As the PSI did not contain any  
prejudicial errors, Stidham failed to demonstrate a reasonable probability  
of a different outcome had counsel ensured Stidham had further time to  
review the PSI. Therefore, we conclude the district court did not err in  
denying this claim without considering it at the evidentiary hearing.

12 Exh. 83, p. 5. Stidham has not shown that the Nevada Court of Appeal's decision  
13 was contrary to or involved an unreasonable application of *Strickland*. 28 U.S.C. §  
14 2254(d). Ground 5 is, therefore, denied.

15 Accordingly, the petition is denied in its entirety.

#### 16 **IV. Certificate of Appealability**

17 This is a final order adverse to the petitioner. As such, Rule 11 of the Rules  
18 Governing Section 2254 Cases requires this court to issue or deny a certificate of  
19 appealability (COA). Accordingly, the court has *sua sponte* evaluated the claims within  
20 the petition for suitability for the issuance of a COA. See 28 U.S.C. § 2253(c); *Turner v.*  
21 *Calderon*, 281 F.3d 851, 864-65 (9th Cir. 2002).

22 Pursuant to 28 U.S.C. § 2253(c)(2), a COA may issue only when the petitioner "has  
23 made a substantial showing of the denial of a constitutional right." With respect to  
24 claims rejected on the merits, a petitioner "must demonstrate that reasonable jurists  
25 would find the district court's assessment of the constitutional claims debatable or  
26 wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citing *Barefoot v. Estelle*, 463  
27 U.S. 880, 893 & n.4 (1983)). For procedural rulings, a COA will issue only if reasonable  
28

1 jurists could debate (1) whether the petition states a valid claim of the denial of a  
2 constitutional right and (2) whether the court's procedural ruling was correct. *Id.*

3       Having reviewed its determinations and rulings in adjudicating Stidham's petition, the  
4 court finds that none of those rulings meets the *Slack* standard. The court therefore  
5 declines to issue a certificate of appealability for its resolution of Stidham's petition.  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

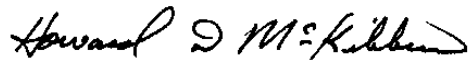
**V. Conclusion**

**IT IS THEREFORE ORDERED** that the petition (ECF No. 9) is **DENIED**.

**IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.

**IT IS FURTHER ORDERED** that the Clerk shall enter judgment and close this case.

DATED: October 17, 2019



HOWARD D. MCKIBBEN  
UNITED STATES DISTRICT JUDGE